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 CORNELL WELLS, JR.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

CORNELL WELLS, JR.,

Plaintiff,

v.

NATIONAL BOARD OF MEDICAL
 EXAMINERS, a not-for-profit corporation,
 FEDERATION OF STATE MEDICAL
 BOARDS, INC., a not-for-profit corporation,

Defendants.

Case No. 3:21-cv-01279-JSC

**UPDATED JOINT CASE MANAGEMENT
 STATEMENT REGARDING
 DISCOVERY STATUS**

Date: August 16, 2022

Time: 11:00 a.m.

Judge: Hon. Jacqueline Scott Corley

1 **1. DISCOVERY**

2 Pursuant to the Court’s Order Following July 13, 2022 Case Management Conference (the
3 “July 13 CMC Order”), and in anticipation of the case management conference scheduled for
4 August 16, 2022, the parties submit the following updates regarding the status of discovery.

5 Plaintiff’s Position:

- 6 • As of August 12, 2022, Plaintiff has not yet subpoenaed Catherine Farmer for a
7 deposition or noticed party-affiliated depositions. On August 1, 2022, Mr. Burgoyne
8 sent an email to Mr. Young indicating an interest in settlement to avoid “time, expense
9 and inconvenience.” Mr. Young has discussed the possibility of settlement with Dr.
10 Wells, and Dr. Wells is interested in resolving this matter, if possible, between the
11 parties before the cost of depositions is incurred.
- 12 • Defendants provided a 12-page remote deposition protocol containing 62 paragraphs
13 of requirements for remote depositions. Mr. Young has some questions/concerns about
14 certain provisions in the protocol and has asked for a meet and confer discussion
15 between counsel prior to the continued CMC on 8/16/2022.
- 16 • Defendants provided a list of “requested search terms for Plaintiff’s laptop search”
17 containing 58 search terms. It is assumed these search terms were meant for a search
18 of Plaintiff’s emails. Some of the search terms may result in identifying information
19 that is of the same private, medical nature as Plaintiff objected to before, and which
20 the Court granted a right to redact from Plaintiff’s medical records already provided to
21 Defendants. Other search terms are likely to produce information protected from
22 disclosure by attorney-client privilege. At the search phase, Plaintiff will search for all
23 the terms provided by Defendants, reserving the right to review the results for privacy
24 and privilege and provide a privilege log accordingly.
- 25 • After at least a half dozen attempts to follow up with the original e-discovery vendor
26 that Mr. Young had been planning would provide e-discovery services in this matter -
27 including attempts to reach him on his cell phone - Mr. Young was unable to make
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1 contact. However, Mr. Young has contacted another e-discovery provider in Walnut
 2 Creek and was advised on 8/12/2022 that the company will be able to complete the
 3 search of both laptops as well as Plaintiff's emails by the end of the week of 8/15. The
 4 company is retrieving the laptops on 8/15/2022 and believes they can obtain the data
 5 from the laptops as well as Dr. Wells' emails by 8/16-8/17. Mr. Young will need some
 6 time to review the collection for privacy and privilege, and can agree to produce the
 7 documents from the laptops and Dr. Wells' email by the end of the week of 8/22/2022.
 8 Defendants have not indicated how broad of a search will be required for Plaintiff's
 9 text messages.

- 10 • Defendants have provided responses to Plaintiff's discovery propounded to date, but
 11 the responses consist mostly of objections. Very few documents were produced either.
 12 Mr. Young has requested a meet and confer discussion to address these deficiencies.
- 13 • Defendants contend that Plaintiff still has not complied with Defendants' discovery
 14 requests listing 4 categories of documents identified in an email from Mr. Young.
 15 These categories will require searching electronic devices by the new e-discovery
 16 vendor.
- 17 • Plaintiff continues his prior objections to producing unredacted copies of Plaintiff's
 18 medical records, which contain highly private, sensitive medical information that has
 19 no bearing on any issues remaining in this case. Defendants efforts to obtain this
 20 information go far beyond what should be discoverable or proportionate to this matter.
 21 However, Plaintiff will cooperate with an *in camera* review process.

22 Defendants' Position:

23 **Status of Actions Required of Defendants Under the Court's July 13 CMC Order.**

- 24 • Defendants provided plaintiff with Catherine Farmer's contact information by July 14,
 25 2022, as ordered by the Court.
- 26 • Defendants provided plaintiff with a draft remote deposition protocol by July 15,
 27 2022, as ordered by the Court. Plaintiff's counsel has not yet provided defendants'
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counsel with any feedback on the draft protocol.

- Defendants provided plaintiff with proposed email search terms by July 15, 2022, as ordered by the Court. Plaintiff's counsel has not yet provided any confirmation that Dr. Wells' two laptops have been provided to his IT consultant or produced any documents based on a search of those laptops.
- By July 20, 2022, defendants provided plaintiff with copies of the third-party discovery that defendants had received pursuant to their third-party subpoenas, as ordered by the Court.
- Defendants joined with plaintiff in submitting a Joint Report on Deposition Scheduling to the Court on July 21, 2022 (one day after the date provided in the July 13 CMC Order, due to the unavailability of plaintiff's counsel to coordinate with defendants' counsel because he was preparing for a deposition in another case).

Status of Actions Required of Plaintiff Under the Court's July 13 CMC Order.

- Plaintiff was directed to provide his IT consultant with access to two laptops that contain documents that are believed to be responsive to the document requests that defendants served on October 27, 2021. In emails dated July 15, 2022 and August 2, 2022, defendants' counsel asked plaintiff's counsel whether this has been done. As of August 9, 2022, defendants' counsel has not received a response to these inquiries.
- Plaintiff was directed to produce his tax returns to defendants by July 15, 2022. On July 18, 2022, his counsel provided partial and, in some instances, illegible tax returns for 2014, 2016, 2017, 2018, and 2020 (unsigned). No records were produced for calendar years 2019 or 2021 (two of the years for which plaintiff is seeking damages that include lost wages).

NBME Has Responded to Plaintiff's Initial Discovery Requests.

Plaintiff served an initial set of discovery requests on defendant National Board of Medical Examiners ("NBME") on May 24, 2022, consisting of a set of document requests and a set of interrogatories. After obtaining an extension from plaintiff, NBME submitted timely responses on July 25, 2022, consisting of interrogatory responses, a response to the document requests, and documents that were referenced in NBME's interrogatory responses and were responsive to the plaintiff's document requests. NBME sent a verification page for the interrogatory responses the next day.

Plaintiff Recently Served an Initial Set of Discovery Requests on FSMB.

Plaintiff served an initial set of discovery requests on defendant Federation of State Medical Boards ("FSMB") on July 19, 2022, consisting of a set of interrogatories. FSMB's responses to those interrogatories are currently due August 19, 2022.

Plaintiff Still Has Not Fully Responded to Defendants' Document Requests.

Defendants served their initial document requests on plaintiff on October 27, 2021. As of August 9, 2022, plaintiff still has not fully responded to those requests.

In an email to defendants' counsel dated July 18, 2022, sent in advance of providing certain documents in response to defendants' document requests, plaintiff's counsel stated as follows:

With this production of documents, the only items I have left on my list that we have discussed or which you requested are:

1. Responsive text messages Dr. Wells has in his possession, custody or control;
2. Responsive emails on either of the two, old laptops Dr. Wells obtained;
3. Documentation from CA Med Board regarding status of Dr. Wells restoring license in California/reasons for denial (# of test attempts v. period of time to pass)
4. Any other responsive documents that may be on the old laptops.

If you can think of any other category of documents or things I have not mentioned, please advise.

On August 2, 2022, defendants' counsel sent an email to plaintiff's counsel stating, in part, as follows:

1. Dr. Wells's Document Production

- Plaintiff was ordered by the Court to provide his two laptops to your IT consultant by July 15. Please confirm that this was done.
- We gave you our requested search terms on July 15. Please provide us with an update on the status of searches that have been done using those terms. Requested documents located by way of such searches should be promptly produced.
- Responsive documents found in Dr. Wells's text messages should be promptly produced.
- Documentation from the California Medical Board should be promptly produced (this includes the letter that you say Dr. Wells received explaining the reasons he has been denied re-licensure after passing Step 3, which you agreed to send to me when we last spoke several weeks ago).
- In your most recent updated responses to Defendants' document requests, you state that "Plaintiff's investigation and discovery are continuing" with respect to all the requests. As our discovery requests were served nine months ago, you should be able to tell us by now that your investigation is complete and all responsive documents have been produced. Please confirm as soon as possible when this is the case.

As of August 9, 2022, plaintiff's counsel had not responded to this email message, nor has plaintiff provided additional documents in response to defendants' October 2021 document requests.

Plaintiff Has Not Verified His Interrogatory Responses.

Defendants served an initial set of interrogatories on plaintiff on October 27, 2022.

On December 16, 2021, plaintiff served PLAINTIFF CORNELL WELLS, JR.'S RESPONSES TO DEFENDANTS' INTERROGATORIES, SET ONE. The responses consisted entirely of objections.

On February 25, 2022, plaintiff served PLAINTIFF CORNELL WELLS, JR.'S FIRST AMENDED RESPONSES TO DEFENDANTS' INTERROGATORIES, SET ONE. The responses did not address all of the defendants' interrogatories, based upon objections that plaintiff subsequently withdrew. Plaintiff verified the responses, as contemplated under Fed. R. Civ. P. 33(b)(5).

1 On May 30, 2022, plaintiff served PLAINTIFF CORNELL WELLS, JR.'S SECOND
2 AMENDED RESPONSES TO DEFENDANTS' INTERROGATORIES, SET ONE. The
3 responses were not signed by plaintiff, contrary to the requirement of Fed. R. Civ. P. 33(b)(5),
4 and no verification page has since been provided by plaintiff or his counsel.

5 On June 1, 2022, plaintiff served PLAINTIFF CORNELL WELLS, JR.'S THIRD
6 AMENDED RESPONSES TO DEFENDANTS' INTERROGATORIES, SET ONE. The
7 responses were not signed by plaintiff, contrary to the requirement of Fed. R. Civ. P. 33(b)(5),
8 and no signature page has since been provided by plaintiff or his counsel.

9 Plaintiff should be directed to verify his Second Amended Responses to Defendants'
10 Interrogatories and his Third Amended Responses to Defendants' Interrogatories.

11 **Defendants Are Entitled to See Information that Plaintiff has Redacted from**

12 **Documents Produced to Date.**

13 As noted in prior case filings, the parties' counsel agreed that plaintiff's counsel could
14 have a "first look" with respect to certain of plaintiff's medical records that are responsive to
15 defendants' document requests but as to which plaintiff has asserted privacy concerns and raised
16 a relevancy objection. See Dkt. 64 at 4 (Updated Joint Case Management Statement); Dkt. 65
17 (Order re: Medical Records Dispute at 1). The information relates to unidentified physical
18 medical conditions which plaintiff's counsel says "predate the incident complained of [in this
19 lawsuit] and have no bearing whatsoever on any issue in this action." Dkt. 61 at 3 (Joint
20 Discovery Letter).

21 Under the process agreed to by the parties' counsel, defendants retain the right to object to
22 any redactions made by plaintiff's counsel, and they may seek *in camera* review by the Court of
23 the complete, unredacted records for a determination by the Court on whether the redacted
24 information should be disclosed to Defendants. Defendants would like to request such review by

1 the Court with respect to documents that plaintiff's counsel has produced with redactions. They
2 are seeking such review because the documents do not predate the events that are the subject of
3 this lawsuit, and they relate directly to issues of both causation and plaintiff's alleged damages.

4
5 On the issue of causation, plaintiff asserts that he was legally entitled to extra testing time
6 as an accommodation when he took Step 3 of the United States Medical Licensing Examination
7 ("USMLE"), based upon certain alleged mental impairments (ADHD and a learning disorder);
8 and that, if he had been provided with his requested accommodations, he would have passed his
9 Step 3 examination when he tested on October 22, 2019 and June 29, 2020 (he tested again on
10 June 22, 2021, with no accommodations, and passed the exam). However, numerous other
11 reasons might explain why plaintiff did not pass the Step 3 exams that he took in October 2019
12 and June 2020, including failure to prepare adequately, insufficient knowledge and understanding
13 of the tested subject matter, test anxiety, and/or preoccupation or distractions resulting from other
14 events going on during the time that he was preparing to take those Step 3 exams or when he
15 tested. Information redacted from records produced by plaintiff from the years 2019 and 2020 is
16 likely to be directly relevant to these possible alternative explanations for plaintiff's not achieving
17 passing test scores when he took the Step 3 exam on October 22, 2019 and again on June 29,
18 2020.
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21 The redacted information is likely to also be relevant on the issue of damages. Plaintiff
22 has stated in his interrogatory responses that he is seeking damages for "Generalized emotional
23 distress" in the amount of \$50,000 - \$100,000, allegedly suffered as of result of being denied
24 accommodations by NBME in July 2019, August 2019, and March 2021; and for lost wages from
25 the time period May 2019 through June 2021. To the extent that he was experiencing other issues
26 during those years that were causing emotional distress, that information is relevant to his request
27 for emotional distress damages from defendants; likewise, if those other issues affected his ability
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1 to work or to become employed, that information is relevant to his claim that he was unable to
 2 obtain employment because of the defendants' actions. Defendants are entitled to see the
 3 information that has been redacted by plaintiff's counsel from records that were generated during
 4 the relevant years (2019 - 2021) because it is directly relevant to the damages he is seeking in this
 5 lawsuit.

7 Defendants therefore request that the Court establish a process and a timeline by which
 8 the Defendants can identify by Bates number the redacted documents that they would like the
 9 Plaintiff to provide to the Court for *in camera* review, for purposes of having the Court determine
 10 whether it will allow the Defendants to receive unredacted copies of those documents.

11 DATED: August 9, 2022

PERKINS COIE LLP

13 By /s/ Robert A. Burgoyne
 14 Aaron J. Ver
 15 Robert A. Burgoyne
 16 Caroline M. Mew

17 Attorneys for Defendants
 18 NATIONAL BOARD OF MEDICAL
 19 EXAMINERS, and FEDERATION OF
 20 STATE MEDICAL BOARDS, INC.

19 DATED: August 9, 2022

YOUNG LAW GROUP

21 By /s/ Eric G. Young
 22 Eric G. Young

23 Attorneys for Plaintiff
 24 CORNELL WELLS, JR.